

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

John Neukom (Bar No. 275887)

5 johnneukom@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

6 jordanjaffe@quinnemanuel.com

50 California Street, 22<sup>nd</sup> Floor

7 San Francisco, California 94111-4788

Telephone: (415) 875-6600

8 Facsimile: (415) 875-6700

9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 WAYMO LLC,

13 Plaintiff,

14 vs.

15 UBER TECHNOLOGIES, INC.;  
16 OTTOMOTTO LLC; OTTO TRUCKING  
17 LLC,

18 Defendants.

CASE NO. 3:17-cv-00939-WHA

**DECLARATION OF RACHAEL MENY  
IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION TO COMPEL ARBITRATION  
OF, AND TO STAY, TRADE SECRET  
AND UCL CLAIMS [9 U.S.C. §§ 3, 4]**

1 I, Rachael Meny, hereby declares as follows.

2 1. I am an attorney licensed to practice in the State of California and am admitted to  
3 practice before this Court. I am a partner at the law firm Keker, Van Nest & Peters LLP (“KVP”).  
4 I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I  
5 would testify competently to those matters.

6 2. I am counsel, along with others at KVP, for Claimant Google Inc. (“Google”) in the  
7 pending JAMS arbitrations that Google filed against Anthony Levandowski in October 2016.

8 3. Google filed one of the pending arbitrations against Levandowski only (the  
9 “Levandowski-only Arbitration”), pursuant to two “Non-competition and Non-solicitation  
10 Agreement[s]” that Levandowski signed when he sold two companies to Google in 2011.  
11 Google’s demand in the Levandowski-only Arbitration alleges one claim against Levandowski for  
12 breach of his Non-competition and Non-Solicitation Agreements with Google. See First Cause of  
13 Action, page 9.

14 4. Google filed the other pending arbitration against Levandowski and one of his Otto  
15 co-founders, pursuant to their employment agreements with Google (the “Joint Arbitration”).  
16 Google’s demand in the Joint Arbitration alleges seven claims against Levandowski and his co-  
17 founder: (1) breach of the employment agreements with Google; (2) breach of fiduciary  
18 duties/duty of loyalty; (3) fraud; (4) tortious interference with contract; (5) tortious interference  
19 with prospective economic advantage; (6) violations of Business & Professions Code section  
20 17200; and (7) unjust enrichment. See Joint Demand, pages 10-19.

21 5. Neither Uber nor Waymo are parties to these two pending arbitration demands.  
22 During meet and confer discussions, counsel for Levandowski and his co-founder have stated that  
23 Uber (and the related Otto/280 Systems entities) are third parties to these arbitrations who will  
24 only produce documents and information pursuant to third party subpoena(s).

25 6. Levandowski and his co-founder are personally represented in the pending  
26 arbitrations by numerous lawyers from Morrison & Foerster LLP, including Arturo Gonzalez (lead  
27 counsel) and Eric Tate. As of April 3, 2017, we understand from Mr. Tate that Morrison &  
28 Foerster continues to represent Mr. Levandowski personally in these arbitrations.

1           7.       Google's arbitration demands do not include allegations concerning trade secrets.  
2 Google's arbitration demands also do not include allegations against Uber or any Otto entity.  
3 Thus the arbitration panel will not decide any issues related to the trade secret misappropriation  
4 claims that Waymo is asserting against Uber.

5           8.       These arbitration demands were filed on October 28, 2016. However, the  
6 arbitrations were not formally commenced by JAMS until January 20, 2017. This delay occurred  
7 primarily because the parties disputed whether, and how, the two arbitration demands could be  
8 consolidated. After filing, Google spent almost one month of time negotiating with  
9 Levandowski's and his co-founder's counsel at Morrison & Foerster over whether the parties  
10 would voluntarily agree to consolidate the two arbitration demands. After extended negotiations,  
11 Levandowski's and his co-founder's counsel refused to voluntarily agree to consolidation. Google  
12 then filed a motion asking JAMS to administratively consolidate the two demands, which  
13 Levandowski and his co-founder opposed. JAMS did not commence the arbitrations until it ruled  
14 on Google's motion in January 2017, denying Google's motion in light of Respondents'  
15 opposition and leaving that issue to be decided by the panel after appointment.

16           9.       The first case management conference in the arbitration occurred on March 10,  
17 2017. The parties in arbitration told the arbitration panel that the arbitration pleadings were  
18 complete and no new parties would be added to the arbitration. Mr. Gonzalez, Mr. Tate and one  
19 other Morrison & Foerster lawyer attended this hearing for Levandowski and his co-founder. I am  
20 informed and believe that this March 10, 2017 conference occurred before Mr. Gonzalez filed a  
21 motion to compel arbitration on behalf of Uber and Otto in Federal District court.

22           10.      By the time of the first case management conference on March 10, 2017, the parties  
23 had not yet agreed upon consolidation or a case schedule. Thus, the arbitrators set a second case  
24 management conference to occur on April 3, 2017 and required the parties to engage in further  
25 meet and confer efforts on these issues. Google had proposed an October or December 2017  
26 arbitration hearing date, but Morrison & Foerster rejected these dates. The parties have now  
27 agreed upon an April 30, 2018 start date for hearing on the consolidated arbitration. This April  
28

1 2018 hearing was agreed upon, in part, after Morrison & Foerster repeatedly contended that it was  
2 not possible to do an arbitration hearing in this matter during 2017.

3 11. On the afternoon of April 3, 2017, Morrison & Foerster first informed KVP that  
4 Uber had filed a motion to compel arbitration in this action. At the April 3, 2017 case  
5 management conference later that day, Morrison & Foerster first informed the arbitration panel  
6 about their pending motion to compel arbitration, but the panel did not take any position regarding  
7 their pending motion. At the April 3, 2017 case management conference, the parties and the panel  
8 confirmed their agreement to an April 30, 2018 hearing date in this matter, and agreed to submit a  
9 signed stipulation to the arbitration panel implementing a schedule for the April 30, 2018 hearing  
10 date. No formal discovery can yet begin in the arbitrations.

11 12. In the arbitration, the parties previously agreed to provide initial disclosures,  
12 including documents, on April 10, 2017, and in March 2017 the panel set this as the date for the  
13 parties' Rule 17 production. At the April 3, 2017 conference, Mr. Levandowski's counsel told the  
14 arbitration panel that it was currently unclear whether Mr. Levandowski would produce relevant  
15 information as required on April 10, 2017. Today, Mr. Gonzalez informed Google that Mr.  
16 Levandowski will not be producing documents in the arbitration, and the parties will brief and  
17 argue the Fifth Amendment issues pursuant to the schedule set by the panel.

18 13. The arbitrations will be heard by the following three arbitrators: Hon. Steven A.  
19 Brick (Ret.), Hon. Edward A. Panelli (Ret.), and Hon. James Ware (Ret.). These three arbitrators  
20 noted that Google's initial request at the first case management conference for an October 2017  
21 hearing date was aggressive in the arbitration context.

22 14. Mr. Lewandowski and his co-founder initially opposed allowing either side to serve  
23 any Interrogatories or Requests for Admission, and most recently argued that each side be limited  
24 to just ten Requests for Production, two non-party document subpoenas (with a limit of 10 RFPs  
25 each), five depositions for non-parties or party affiliates (including employees of Google and  
26 Uber), and that the depositions of Mr. Levandowski and his co-founders be limited to a combined  
27 ten hours.  
28

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct, and that this declaration was executed in Truckee, California, on  
3 April 10, 2017.

4  
5 DATED: April 10, 2017

/s/ Rachael Meny

Rachael Meny

6  
7  
8  
9 **SIGNATURE ATTESTATION**

10 Pursuant to Local Rule 5-1(i)(3), I attest under penalty of perjury that concurrence in the  
11 filing of this document has been obtained from Rachael Meny.

12  
13 /s/ Charles K. Verhoeven

Charles K. Verhoeven